

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE	<i>Application Number</i>	09/372,646
	<i>Filing Date</i>	August 12, 1999
	<i>First Named Inventor</i>	Marc A. JURGOVAN et al.
	<i>Group Art Unit</i>	1761
	<i>Examiner Name</i>	D. Becker
	<i>Attorney Docket Number</i>	914-1372DIV1
<i>Title of the Invention:</i> FLEXIBLE PACKAGE HAVING A RE-CLOSABLE ZIPPER		

APPEAL BRIEF

Assistant Commissioner for Patents
 Washington, D.C. 20231

Dear Sir:

This is Applicants' brief in support of their appeal against the rejections set forth in the Office Action of February 13, 2001.

REAL PARTY IN INTEREST

The real party in interest is Recot, Incorporated, the assignee of this application.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claims 1-26 are pending in this application. All claims stand rejected.

STATUS OF AMENDMENTS

Applicants have filed no amendments subsequent to the final rejection.

SUMMARY OF INVENTION

The invention comprises a flexible package 10 having front and rear walls 11, 12 formed of an elastomeric material and sealed together at a top seal 20 (p. 10, lns. 15-20; p. 11, ln. 28-p. 12, ln.

8). A zipper 40 includes first and second zipper parts. The first zipper part 40-1 with a first engagement member 43-1 is attached to an inside surface of the front wall 11, and the second zipper part 40-2 with a second engagement member 43-2 is attached to an inside surface of the rear wall 12 (p. 14, ln. 28-p. 15, ln. 4). The first engagement member 43-1, comprising a projection, and the second engagement member 43-2, comprising a socket, are engaged together (p. 17, lns. 1-4). The top seal 20 is manually pinch-grip openable, and the first and second engagement members are manually pinch-grip openable, under a pinch-grip pulling force applied to the front wall 11 and rear walls 12 below the engagement members 43-1, 43-2 (Figures 1-2; p. 13, lns. 5-14; p. 14, lns. 1-23). The front wall 11 and the rear wall 12 have sufficient strength to resist tearing and deformation during the pinch-grip pulling force (p. 11, ln. 18-p. 12, ln. 8).

The invention also includes a package wherein the top seal 20 is formed by applying heat and/or pressure for a prescribed dwell (p. 11, lns. 8-17). The invention also includes a package in which the top seal is a non-heated pressure and dwell seal (p. 11, lns. 14-17). The front wall 11 and rear wall 12 are preferably formed of laminated plastic including inner sealable layers 11-i, 12-i and outer layers 11-o, 12-o (p. 11, lns. 18-23).

Food product (FP) is stored inside the package below the first and second engagement members (Figure 2; p. 11, ln. 1-2). According to another aspect of the invention, the food product includes salty, sweet or savory snack foods (p. 7, lns. 1-4).

According to another aspect of the invention, the top seal is manually pinch-grip openable under a pinch grip pulling force of less than about 3 pounds/inch and most preferably between 1 and 2 pounds/inch (p. 12, lns. 15-17). The first and second engagement members of the zipper are preferably manually pinch-grip openable under a pulling force of less than about 2½ pound/inch and

most preferably openable under a pinch-grip pulling force of between 1½ to 2 pounds/inch (p. 14, lns. 4-7).

According to another aspect of the invention, the package includes a bottom seal 30 (p. 10, ln. 16). According to another aspect of the invention, the first zipper part 40-1 includes at least two points of sealant (C in Figure 3) attached to either the front wall 11 or the back wall 12, and the second zipper part 40-2 includes at least 2 points of sealant (C and S in Figure 3) sealed to the inner layer of the other of the front wall 11 and back wall 12 (p. 17, lns. 6-27).

According to another aspect of the invention, the seal between the inner sealable layers 11-i, 12-i is openable by delamination and the engagement between the engagement members 43-1 and 43-2 of the zipper 40 are disengaged by the application of the predetermined pinch-grip pulling force applied to each of the front and rear walls 11, 12 below the zipper 40 (p. 13, lns. 5-23).

ISSUES

The issues to be decided on this appeal are as follows:

- 1) whether claims 1-12 and 17-22 are unpatentable under 35 U.S.C. § 103(a) over Christoff, U.S. Patent No. 4,617,683 (Christoff '683); and
- 2) whether claims 13-16 and 23-26 are unpatentable under 35 U.S.C. § 103(a) over Christoff '683 in view of Thompson et al., U.S. Patent No. 5,224,779 (Thompson '779).

GROUPING OF CLAIMS

Claims 1-16 stand or fall together and claims 17-26 stand or fall together.

ARGUMENT

Claims 1-12

Claims 1-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Christoff '683. Because the Examiner has not made out a *prima facie* case of obviousness, the applicants respectfully request reversal of the rejection.

While the rejection of claims 1-12 is styled as a rejection over Christoff '683, the Examiner also cites Staller, U.S. Patent No. 3,440,696 for its disclosure of a single male protrusion and single female socket and Thompson '779 for its disclosure of heat seals used as top seals in packaging. The Examiner has failed to make out a *prima facie* case of obviousness in that he has not found disclosure, in one or more prior art references, of all of the elements recited in independent claim 1, nor has the Examiner found any teaching of, or motivation for, creating the combination of elements recited in claim 1. For example, the Examiner has not cited any teaching of a flexible package including first and second zipper parts wherein the first and second engagement members of the zipper parts are engaged together. The Examiner also has not cited any disclosure in the prior art of a "top seal being manually pinch-grip openable and said first and second engagement members being manually pinch-grip openable under a pinch-grip pulling force applied to said front and rear walls below said engagement members." The Examiner contends that Christoff '683 discloses at col. 6, lns. 30-44 a package that is pinch-grip openable. The applicants respectfully disagree. Christoff '683 describes the method by which the bag disclosed in that patent may be opened as follows:

Opening of the bag may be effected either by pulling the seal 42 at the top end of the bag open, or by severing the top end of the bag along a line 58 between the seal 42 and the reclosable fastener 27 and then

using the sidewall portions 59 located outwardly from the fastener 27 as pull flanges for pulling the closed fastener open when desired. (Col. 6, lns. 35-41)

In the context of the present application, the term pinch-grip openable has a specific meaning which is shown in Figures 1 and 2 and described, *inter alia*, at page 11, lines 3-7. In particular, the consumer pinches the unsealed portions of the opposed walls of the package with his or her hands and pulls generally perpendicularly outwardly in the directions G, G' (see Figures 1 and 2). Christoff '683, on the other hand, describes that the package is opened by pulling the seal 42 open or by severing the top of the bag and using sidewall portions 59 located outwardly from the fastener 27 as pull flanges. The package of Christoff '683 is not disclosed to be pinch-grip openable.

To promote consumer acceptance, it is desirable that the reclosable package of the present invention be openable in substantially the same manner as is a conventional snack food package lacking the reclosability feature. Conventional snack food (e.g., chips) packages are typically opened by the consumer grasping the front and back walls of the package at a location below a top seal and pulling the front and rear walls away from each other thereby causing the sealed top of the package to open by delamination progressing from inside the package (i.e., the product side of the seal) to the outer edge of the seal. By delaminating, as opposed to tearing, the outer surfaces of the package walls remain substantially intact, and thus present a more acceptable appearance and are less prone to subsequent tearing from the edge in a longitudinal direction than if the package walls were to tear or distort upon opening.

Furthermore, for the reclosable package containing a snack food product of the present invention, it is desirable that the reclosable feature (i.e., the zipper) be closed during shipment, storage, display, etc. of the package with the snack food product sealed therein so as to avoid snack

food crumbs from becoming lodged in the zipper thereby interfering with subsequent functioning of the zipper. Therefore, to foster consumer acceptance of the reclosable package, it is desirable that the package, which is both sealed and zippered closed, be openable by a consumer using the same pinch-grip pulling procedure that the consumer would use on a snack food package that does not include the reclosable zipper.

In the invention recited in claim 1 in which the first and second engagement members of the first and second zipper parts, respectively, are engaged together and in which a front wall and a rear wall of the package are sealed together at a top seal, the top seal is manually pinch-grip openable and the first and second engagement members are manually pinch-grip openable "**under a pinch-grip pulling force applied to said front and rear walls below said engagement members.**" The cited reference, Christoff '683, specifically teaches that the bag is opened by pulling the seal 42 at the top end of the bag open or by severing the top end of the bag along a line between the seal and the reclosable fastener [see Figure 3] and then using the side wall portions located outwardly (i.e., above, see Figure 3) from the fastener 27 as pull flanges for pulling the closed fastener open when desired. See column 6, lines 35-41. This is different from the invention recited in claim 1 in which no severing is required and in which the top seal and the engagement members are pinch-grip openable under a pinch-grip pulling force applied to the front and rear walls below the engagement members. Christoff '683 does not disclose nor does it suggest a reclosable package wherein both the top seal and the interengaged zipper portions are substantially simultaneously openable by application of a pinch-grip pulling force applied below both the zipper and the top seal. The Examiner acknowledges this shortcoming of Christoff '683 and disregards it based on the assertion that the phrase "**under a pinch-grip pulling force applied to said front and rear walls below said engagement members**"

merely represents preferred method of use of the claimed invention. Applicants respectfully disagree. The limitation "said top seal being manually pinch-grip openable and said first and second engagement members being manually pinch-grip openable under a pinch-grip pulling force applied to said front and rear walls below said engagement members" of claim 1 represents a limitation defining structural features of the top seal, the engagement members, and the interrelationship of the two. In the claimed invention, the top seal and the engagement members are constructed and arranged so as to be openable in the manner claimed. Being openable upon the application of a pinch-grip pulling force below the seal and the zipper is more than a mere preferred method of use.

There is no disclosure in Christoff '683 that the package disclosed in that patent can be opened in the manner recited in claim 1. Thus, Christoff '683 does not render obvious the invention of claim 1.

Accordingly, claim 1, and all claims dependent therefrom, are allowable over Christoff '683 and reversal of the rejection of claims 1-12 is respectfully requested.

Claims 17-22

Claims 17-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Christoff '683. Because the Examiner has not made out a *prima facie* case of obviousness, the applicants respectfully request reversal of the rejection.

Claim 17 recites that the seal and the inner sealable layers are openable by delamination and the engagement between the engagement members of the zipper are disengaged upon the application of a predetermined pinch-grip pulling force applied to each of said front and rear walls below said zipper. The advantages of delamination, versus tearing, are described above. While Christoff '683 discloses that the package described may be of a laminated construction, it does not describe a

package that is openable by delamination at the seal. Thus, in addition to the reasons discussed above with respect to claim 1, the invention of claim 17 is patentable over Christoff '683 because Christoff '683 does not disclose a combination including a seal that is openable by delamination upon the application of a predetermined pinch-grip pulling force.

Thus, claim 17, and all claims depending therefrom, are allowable over Christoff '683 and reversal of the rejection of claims 17-22 is respectfully requested.

Claims 13-16 and 23-26

Claims 13-16 and claims 23-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Christoff '683 as applied to independent claims 1 and 17 in view of Thompson et al., U.S. Patent No. 5,224,779. Claims 13-16 and 23-26 are believed to be allowable as being dependent upon allowable base claims, there being nothing in the teachings of Thompson '779 to overcome the deficiencies of Christoff '683 with respect to the inventions of claims 1 and 17. Specifically, there is nothing in Thompson '779 that would disclose or suggest a package and product combination wherein the package has a top seal and interengaged members of a zipper are openable by application of a pinch-grip pulling force applied below both the zipper and the top seal. Therefore, withdrawal of the rejections of claim 13-16 and 23-26 is respectfully requested.

CONCLUSION

In view of the foregoing, claims 1-26 are patentable over the prior art of record. Thus, the rejections of claims 1-26 are submitted to be unsupportable on the record and therefore improper. It is respectfully requested that the Board reverse all grounds of rejection and direct the passage of this application to issue.

The Commissioner is hereby authorized to charge any fee or credit any overpayment pursuant to 37 CFR 1.16 or 1.17 to Deposit Account No. 02-2135.

Attached hereto is a copy of the claims of the application pending on appeal.

RESPECTFULLY SUBMITTED,					
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APPENDIX

1. In combination:
 - a) a flexible package having
 - a elastomeric front wall and an elastomeric rear wall;
 - said front wall and said rear wall being sealed together at a top seal;
 - a first zipper part attached to an inside surface of said front wall and having a first engagement member facing said rear wall;
 - a second zipper part attached to an inside surface of said rear wall and having a second engagement member facing said front wall;
 - said first and second engagement members being engaged together;
 - said top seal being manually pinch-grip openable and said first and second engagement members being manually pinch-grip openable under a pinch-grip pulling force applied to said front and rear walls below said engagement members;
 - said front and rear walls having a sufficient strength to resist tearing and deformation under the application of said pinch-grip pulling force during pinch-grip opening; and
 - b) a food product stored inside said package below said first and second engagement members.
2. The combination of claim 1, wherein said top seal is formed by applying heat or pressure for a prescribed dwell period.

3. The combination of claim 2, wherein said top seal is formed by applying heat and pressure for a prescribed dwell period.
4. The combination of claim 2, wherein said top seal is a non-heated, pressure and dwell seal.
5. The combination of claim 1, wherein said engagement members include interlocking protrusions.
6. The combination of claim 5, wherein said first engagement member has a male protrusion and wherein said second engagement member has at least one protrusion forming a female socket, said male protrusion being engaged in said female socket.
7. The combination of claim 1, wherein said front and rear walls are laminated plastic walls including at least one inner sealable layer and at least one outer wall layer.
8. The combination of claim 1, wherein said first engagement member consists of a single male protrusion and wherein said second engagement member consists of a single female socket, said male protrusion being engaged in said female socket.

9. The combination of claim 1, wherein said first and second zipper parts have cross-sectional shapes that are different from one another and are separate pieces that are connected together only at said engagement members.
10. The combination of claim 1, wherein said food product includes salty, sweet or savory snack foods.
11. The combination of claim 10, wherein said food product includes snack food chips.
12. The combination of claim 11, wherein said food product includes potato or corn based chips.
13. The combination of claim 1, wherein said top seal is manually pinch-grip openable under a pinch-grip pulling force of less than about 3 lbs/inch.
14. The combination of claim 1, wherein said top seal is manually pinch-grip openable under a pinch-grip pulling force of between about 1 to 2 lbs/inch.
15. The combination of claim 1, wherein said first and second engagement members are manually pinch-grip openable under a pinch-grip pulling force of less than about 2½ lbs/inch.

16. The combination of claim 1, wherein said first and second engagement members are manually pinch-grip openable under a pinch-grip pulling force of between about 1½ to 2 lbs/inch.

17. In combination:

a) a flexible package, including

front and rear walls, said front and rear walls being laminated plastic walls including at least one inner sealable layer and at least one outer wall layer,
a bottom seal formed between lower sides of said front and rear walls;
a top seal formed between upper sides of said front and rear walls, said top seal including a seal between said inner sealable layers;

a zipper located within said package proximate said top seal, said zipper having a first zipper part having a first engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base;

said zipper also having a second zipper part having a second engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base;

said first engagement member being engaged with said second engagement member;

said at least two points of sealant on said first zipper part being sealed to said inner layer of one of said front and rear walls and said at least two points of sealant on said second zipper part being sealed to said inner layer of the other of said front and rear walls;

said seal between said inner sealable layers being openable by de-lamination and said engagement between said engagement members of said zipper being disengaged upon the application of a predetermined pinch-grip pulling force applied to each of said front and rear walls below said zipper; and

b) food product stored within said package between said closed zipper and said bottom seal.

18. The combination of claim 17, wherein said first engagement member has a male protrusion and said second engagement member has a female socket, said male protrusion being engaged with said female socket.

19. The combination of claim 17, wherein said first engagement member consists of a single male protrusion and said second engagement member consists of a single female socket, said male protrusion being engaged with said female socket.

20. The combination of claim 17, wherein said first and second zipper parts have cross-sectional shapes that are different from one another and are separate pieces that are connected together only at said engagement members.

21. The combination of claim 17, wherein said food product includes salty, sweet or savory snack foods.

22. The combination of claim 21, wherein said snacks foods include potato or corn based chips.

23. The combination of claim 17, wherein said top seal is manually pinch-grip openable under a pinch-grip pulling force of less than about 3 lbs/inch.

24. The combination of claim 17, wherein said top seal is manually pinch-grip openable under a pinch-grip pulling force of between about 1 to 2 lbs/inch.

25. The combination of claim 17, wherein said first and second engagement members are manually pinch-grip openable under a pinch-grip pulling force of less than about 2½ lbs/inch.

26. The combination of claim 17, wherein said first and second engagement members are manually pinch-grip openable under a pinch-grip pulling force of between about 1½ to 2 lbs/inch.